MC(N) 3684/2006

BEFORE

THE HON'BLE MR JUSTICE RANJAN GOGOI

Heard Mr. B. D. Konwar, learned counsel for the applicant/respondent No. 4 and Mr. H. R. A. Choudhury, learned Senior Counsel appearing for the O.P./writ petitioner.

Misc. Case No.3477/2006 has been filed seeking vacation/ modification/ alteration of the interim order dated 8.9.2006 passed by this Court in W.P.(C) No.4576/2006 whereas Misc. Case No.3684/2006 has been registered on the basis of the objection filed against the prayer made in Misc. Case No.3477/2006.

By the aforesaid interim order dated 8.9.2006 this Court had put a restraint on the transfer of the petitioner/O.P. as made by order dated 5th of September 2006. It may be noticed at this stage that the O.P./writ petitioner is a B.D.O. and he has been transferred from Rupshi Development Block in Dhubri District to Nayeralga Development Block which is also in the Dhubri District.

While Sri B. D. Konwar, learned counsel for the applicant-respondent No. 4, contends that the interim order dated 8.9.2006 needs to be vacated as the facts of the case do not make out any case for interim interference of the Court, Sri H.R.A. Choudhury, learned counsel appearing for the O.P./writ petitioner has contended that the transfer of the writ petitioner made by order dated 5th of September 2006 is not in public interest. To support the aforesaid contention Sri Choudhury has submitted that transfer of the writ petitioner to Nayeralga Development Block is in modification of an earlier notification dated 27.7.2006 by which one Khabir Uddin Ahmed was transferred to the said Nayeralga Development Block and further that the respondent No.4 who was covered by the earlier transfer order dated 27.7.2006 has now been posted in the Rupshi Development Block in place of the petitioner merely as a means of accommodation. Sri Choudhury has further argued that the transfer is contrary to the Government policy of allowing an incumbent to remain in one particular location for three years and furthermore that the transfer having been made in the mid-academic session, the education of the children of the petitioner will suffer if the transfer in question is allowed to be given effect to.

By the earlier Govt. order dated 27.7.2006, in place of the respondent No.4 who was working in the Tapatari Development Block, Bongaigaon District ace one Sri B. J. Baruah was transferred to the said place. The respondent No.4 was, however, not given any posting by the order dated 27.7.2006. The said posting of the respondent No.4 has now been given by means of the impugned order dated 5.9.2006 by which he has been posted at the Rupshi Development Block in place of the petitioner. The petitioner has been transferred to the Nayeralga Development Block to which place one Khabir Uddin Ahmed was transferred by the earlier order dated 27.7.2006. Whether the said Khabir Uddin Ahmed has been given another posting by a separate or subsequent order is a fact that is not before the Court. Nonetheless, it cannot be said that the exercise of the power of posting as made by the State by means of the orders dated 27.7.2006 and 5.9.2006 are in any way so grossly erroneous or violative of the norms in force that the Court's interference would be called for.

Coming to the other argument advanced by Sri Choudhury it must be noticed that the Courts have repeatedly emphasized that the Govt. policy of allowing an incumbent to remain in any one location for three years does not vest in such incumbent any right which is capable of enforcement by the Court. The other inconvenience pointed out i.e. interference with the academic life of the children of the petitioner can hardly be taken note of by the Court as appreciation of the said difficulties requires knowledge of certain facts which are not before the Court.

In the aforesaid circumstances, I am of the view that the interim order dated 8.9.2006 passed by this Court in W.P.(C) No.4576/2006 should not be continued. It is accordingly vacated and the Misc. Case (M.C. 3684/2006) is allowed. Both the Misc. Cases are consequently disposed of.